Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-000188

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Simon v. Bi et al,* 2018 BCCRT 722

B E T W E E N :

Beverly Simon

APPLICANT

A N D :

Ketao Bi and Zhi hua Zhang

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1) This dispute is about a $1,500 holdback related to a house sale in late 2017. The applicant, Beverly Simon, says the respondents Ketao Bi and Zhi hua Zhang held

back the $1,500 on the basis that a refrigerator (fridge) was allegedly removed from the house before their possession date.

2) The applicant says the fridge was not removed and now the respondents claim they are owed $500 out of the holdback for the repair of a garage door opener (opener). At the outset, I note the opener refers to the mechanism in the door itself, rather than a fob to open it. The applicant says the opener was accounted for "within the default allowance" and in the reduced sale price of the house.

3) The applicant wants $1,500 plus an order that she does not owe the respondents $500 for the garage door opener. There is no properly filed counterclaim against Ms. Simon before me, although it appears that at one point the respondents intended to make a counterclaim.

4) The applicant is self-represented. The respondents are represented by Nan Bi, a family member.

JURISDICTION AND PROCEDURE

5) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

6) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal

proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

7) The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8) Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

9) The issue in this dispute is whether the applicant is entitled to payment of $1,500, plus an order that she does not owe $500 to the respondents for the opener's repair.

EVIDENCE AND ANALYSIS

10) In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11) The respondent Zhi hua Zhang was listed on the contract as the sole buyer of the house. However, the respondent Mr. Bi was listed as the buyer on the statement of adjustments. There is no explanation of the discrepancy before me. Given the other evidence and submissions before me, I find it is undisputed that the respondents are jointly responsible for the applicant's claims about the fridge and the opener.

12) In their earlier Dispute Response forms, which were identical, the respondents stated that the $1,500 was "held" by their lawyer "for appliance", because they found out the applicant "tried to move out one of the fridges". It is undisputed that the fridge in question remained in the house. In their Dispute Response, the respondents further stated "before we found out the problem of garage door opener, we willing to refund the $1500 anytime. We should get $500 replacement cost for the garage door opener at the same time". The respondents' submissions for this decision focus only on the opener.

13) In these circumstances, I find there is no remaining issue about the fridge. It appears the respondents have chosen not to return the $1,500 holdback because they first want $500 for opener. It is unclear to me why the respondents did not just refund the applicant $1,000, given their position. In any event, at minimum I find the applicant is entitled to an order for payment of the $1,000.

14) While the respondents did not properly file a counterclaim, given the applicant's requested order about the opener I find it appropriate to resolve the issue of whether the applicant owes the respondent $500 for it. In these circumstances, nothing turns on whether the malfunctioning opener was properly the subject of the $1,500 holdback.

15) The August 15, 2017 contract of purchase and sale for the house had an October 19, 2017 completion date, with October 20, 2017 as the date of possession. One of the subject clauses is that the respondents had the option of obtaining and approving an inspection report on or before August 22, 2017, which the respondents did on August 30, 2017.

16) The August 30, 2017 inspection report notes the “occupant” was in attendance during the inspection. I find this likely referred to the applicant’s tenant, whose evidence I have discussed below. The 48-page inspection report is detailed and includes photos. In a section titled “Garage/Carport”, it notes the garage door is a single metal automatic door. However, there is no mention of the opener not functioning properly, although the inspector does note the ceiling light in the garage was not working.

17) Ultimately, the respondents lifted their “subject to inspection” clause and completed the purchase. The respondents say they did not understand there was a problem with the opener until their possession date, because the opener was working at the time of their inspection, which is why the problem was not mentioned in the inspection report.

18) There is no dispute that under the parties’ contract the garage door and its opener had to be in the same condition on October 20, 2017 as when the property was viewed on August 14, 2017. However, there is no evidence before me about the opener’s state on August 14, 2017 and whether it was specifically examined on that date. Thus, this dispute turns on the opener’s functionality on the August 14, 2017 viewing date, and later when the house was inspected on August 30, 2017.

19) The applicant says there is no valid claim for $500, because the opener’s lack of function was accounted for “in the default allowance” and in the reduction of the house price. Yet, I have no evidence before me about any price reduction, such as an amended contract. The “default allowance” appears to refer to money allowed if the inspection failed. In any event, I have no evidence before me to support a conclusion that the parties made any agreement about the opener before the sale’s closing date. Instead, the applicant submitted a statement of adjustments showing the sale price of the house was $800,000, which is consistent with the final contract in evidence that shows $800,000 was actually an increase from $780,000. I find this discrepancy leads me to conclude the applicant’s evidence is less reliable.

20) The applicant’s position is also that the opener was not working completely properly on the date of inspection (and presumably she intended to say it also was not working on August 14, 2017), and so the opener’s condition was known to the respondents and it was in substantially the same condition. In support, the applicant’s long-term tenant provided an email that for most of the 7 years of his tenancy the garage door always opened and closed without a problem. The tenant stated that the “last year” he lived there (2017) the opener started to have a minor issue with closing, in that it would stop and head back up, but all that was needed was a double click on the garage door bottom.

21) The tenant stated he was present during the respondents’ inspection on April 10, 2017 and that the inspector had it in his notes that the garage door had issues closing. The tenant stated the inspector asked him to show the inspector and “the buyer”, who I infer was Mr. Bi, how to operate the door, which the tenant says he did. As noted above, the respondents’ inspection was done on August 30, 2017, not April 10, 2017. I do not accept the tenant’s statement that he showed “the new owners”, the respondents, how to operate the opener and garage door, given this unexplained date discrepancy. On balance, I place greater weight on the detailed August 30, 2017 inspection report that did not identify any concerns about the garage door or its opener.

22) On balance, I find it most likely that the opener was working on August 14, 2017 but was not working on October 20, 2017. I turn then to the cost of the opener’s repair, for which the respondents seek $500.

23) The respondents say the parts and labour for the opener’s repair totaled $500. The respondents provided an October 30, 2017 $334.88 receipt from Home Depot for a “whisp belt” which I infer is a necessary part for the opener. They also provided a receipt for $500 “total” for replacement of the opener. On balance, I accept the respondents reasonably spent $500 to repair the opener.

24) Given my conclusions above, I find the respondents must pay the applicant a net of $1,000, which takes into account the $1,500 holdback and the $500 the applicant

owes for the opener. The applicant is entitled to pre-judgment interest on the $1,000 under the *Court Order Interest Act* (COIA), from October 20, 2017.

25) There was divided success. In accordance with the Act and the tribunal's rules, I find the applicant is entitled to half of her $125 in tribunal fees ($62.50) and half of her $25 registered mail expense ($12.50), for a total of $75.00. The respondents did not claim any fees or disbursements.

ORDERS

26) Within 14 days of this decision, I order the respondents to pay the applicant a total of $1,087.79, broken down as follows:

    a) $1,000 in damages,

    b) $12.79 in pre-judgment interest under the COIA, and

    c) $75, with $62.50 in tribunal fees and $12.50 in dispute-related expenses.

27) The parties' remaining claims are dismissed. The applicant is entitled to post-judgment interest, as applicable.

28) Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

29) Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a

tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair